

EXHIBIT H

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
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4 In the Matter of:

5
6 BSG RESOURCES LIMITED (IN
7 ADMINISTRATION) AND WILLIAM
8 CALLEWAERT AND MALCOLM
9 COHEN, AS JOINT ADMINISTRATORS, Case No. 19-11845-sh1
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11 Debtors.
12 - - - - - x
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14 U.S. Bankruptcy Court
15 One Bowling Green
16 New York, New York 10004-1408
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18 November 4, 2019
19 11:29 AM
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21 B E F O R E :
22 HON SEAN H. LANE
23 U.S. BANKRUPTCY JUDGE
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1 Hearing re: Status conference

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25 Transcribed by: Jamie Gallagher and William Garling

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1 P R O C E E D I N G S

2 THE COURT: All right. The next case is BSG
3 Resources Limited, Chapter 15 case. Let me get appearances,
4 starting with folks on this side of the room and working our
5 way across.

6 MR. LASTOWSKI: Good morning, Your Honor. Michael
7 Lastowksi of Duane Morris LLP, here today for the joint
8 administrators of BSGR. With me is my partner, Rick Hyman,
9 and my colleague, Jarret Hitchings, together with a
10 representative of BDO, Mr. Steven Peters. I think you've
11 met him before.

12 THE COURT: All right. Thank you.

13 MS. SCHWEITZER: Good morning, Your Honor. Lisa
14 Schweitzer from Cleary Gottlieb for Vale, with my partner,
15 Jeff Rosenthal.

16 MR. ROSENTHAL: Good morning.

17 THE COURT: Good morning. All right. While I was
18 not surprised overly to receive multiple, single space,
19 extensive letters before today's hearing, I will say I can't
20 keep doing this. This is just not a productive exercise and
21 I have other things to do. I'm sure you do as well.

22 So if people can't get this straightened out, I'm
23 going to require the appointment of the special master to
24 supervise discovery, because this is, again, every hearing
25 there's two letters, three letters, four letters. And I --

1 looking at them, there are some legitimate issues that have
2 been raised. So I know, looking at the response, there's
3 two letters of Duane Morris in response to the letter that
4 was filed by Cleary on the 30th. So I think we're looking
5 at dockets number 71, 72, and 73. But, you know, there's a
6 line in there about how much money people have spent on
7 attorney's fees.

8 Well, much of the wound appears to be self-
9 inflicted from where I sit. I don't know that I've ever had
10 a Chapter 15 case where a party has proceeded in such sort
11 of a -- in this fashion, let me put it this way. I think
12 it's pretty well understood what's supposed to happen. So
13 I'm open to suggestions. And I can make another set of
14 rulings dealing with all of the issues that have come up,
15 but I have no doubt that this will not be the last set of
16 rulings, and then there'll be another hearing, and there'll
17 be another five letters. And I have a day job, just as you
18 all do, but I don't get -- again, it's just not a productive
19 way to go about things.

20 So I'm happy to hear any thoughts about that. In
21 the meantime, once more into the breach, I suppose, on
22 discovery. So --

23 MR. LASTOWSKI: Michael Lastowski, Your Honor. We
24 had discussed prior to today having a special master, that
25 we had discussed some variations on that because clearly the

1 Court doesn't have the resources or time to monitor what's
2 been going on in this case. I'll just pose to the Court
3 this question. What would the procedure be for appointing
4 one?

5 THE COURT: I don't know. I know Judge -- I
6 remember hearing Judge Lifland in his infinite creativity
7 talking about one in context. I guess -- I'm very loathe to
8 do it because, obviously, I'm very steeped in what's
9 happened thus far. I have notes upon notes. So it's just
10 that I -- this kind of thing, if you were in District Court,
11 they would (indiscern.) magistrate, and the magistrate, that
12 would be their laser like focus.

13 And normally in Bankruptcy Court, for whatever
14 reason, we don't have as many of these kind of discovery
15 fights that are knockdown, drag out fights to the death.
16 And when we do -- I mean, even in large 11 cases, we don't -
17 - you know, people tend to fight about a couple things and
18 then the dust clears, and they go about their merry way.
19 But this is -- and certain things, observations I have about
20 issues that have been raised should be very -- I mean, you
21 all could probably write before I actually utter them
22 because you, I think, have a pretty good idea of where I am.

23 So I don't know. I'd be happy to have the parties
24 talk about it. It's an additional cost, but at this point,
25 I don't see the current procedure being overly cost-

1 efficient either. So if I thought that was the case, I
2 would be -- I would not even throw it out there. But it
3 doesn't seem to be -- this doesn't seem to be working
4 particularly well.

5 I don't know if I've considered other options in
6 my toolbox to try to push things along. I think I've used a
7 lot of them. I haven't used all of them. There are sort of
8 discovery equivalents of the Allen charge in a criminal case
9 to get people to really pay attention. That's sanctions,
10 and I'm -- you know, again, it is what it is.

11 So I just throw it out there just because I don't
12 see this ending particularly well. Again, it's sort of
13 inconsistent with the notion in the statute about the need
14 to promptly address the Chapter 15 request for relief. I've
15 had some interesting Chapter 15 cases, but I've never had
16 one that has been this slow developing.

17 So I don't know. I don't have a particular idea,
18 but I throw the idea out to the extent that I can't see
19 another process being any less productive or efficient than
20 what we've been doing.

21 MR. LASTOWSKI: Well, we endorse that idea, Your
22 Honor. And personally, I think it would be best if you
23 designated someone who could serve as a special master, or
24 however that person would be designated, subject to a
25 confidence check.

1 I know in a lot of times in this context, each
2 party nominates a group of people and then they select a
3 third one. I think that could be too time consuming.
4 There's too many opportunities in that context for disputes.
5 I think if we're very straightforward about it --

6 THE COURT: Well, I don't --

7 MR. LASTOWSKI: -- it can be done timely and --

8 THE COURT: Yeah, I mean, normally I try to get a
9 list from people and then I pick from the list. That's what
10 I normally do, just so that people aren't making the
11 decision themselves if there's a lot of acrimony. But at
12 the same time, you know, there are plenty of very good folks
13 out there who people can agree don't really have an axe to
14 grind, other than, you know, just being -- they don't have
15 an axe to grind and they're just competent professionals.

16 So -- all right. Anything else on this particular
17 issue?

18 MR. LASTOWSKI: On this particular issue, no. We
19 have more to talk about --

20 THE COURT: Yeah.

21 MR. LASTOWSKI: -- if Your Honor wants to hear it
22 today --

23 THE COURT: No, let me --

24 MR. LASTOWSKI: -- but on this issue --

25 THE COURT: Let me hear from the other side on

1 this particular question and then we'll see where we are.

2 MS. SCHWEITZER: Thank you, Your Honor. Lisa
3 Schweitzer for the record. We welcome all constructive
4 approaches, and this is certainly a constructive approach
5 that we could have someone -- if we are burdening you, this
6 more readily accessible and can get into the weeds.

7 I think that we're happy to provide a list of
8 suggested names, and I'm sure we can all be creative in
9 finding an appropriate person and procedures to make it
10 work. Obviously, we're still here to talk today, is our
11 only concern is just that it moves things forward rather
12 than --

13 THE COURT: No, I totally get that. I thought the
14 fact that there's some discussion about completing certain
15 things by November 8th. I don't know if that's going to
16 happen or not. It's unclear to me. Today is what?
17 November 3rd.

18 MS. SCHWEITZER: My understanding is in the letter
19 that was filed over the weekend, November 8th slipped to
20 early December. I don't have the exact date. So I don't
21 believe there's a -- they can speak. But I think we're
22 still in the slip slope, so --

23 THE COURT: Yeah. So that's fine. I'm happy to
24 talk about some issues. Again, what I want to do is I
25 recognize that, having been on the other side of this, is

1 that people are loathe to tell judges when they have bad
2 ideas. And I appreciate it's a hazard of the job, but it
3 can also mean that sometimes people are too kind about
4 agreeing to an idea, and then later you say, oh, that's a
5 terrible idea. And sometimes you don't, you know -- you
6 might not have good news. You might say, "Judge, we know
7 that this has been time consuming, but we think that these
8 things are ultimately going to percolate to you anyway," and
9 whatever.

10 So I appreciate folks' comments, but I also want
11 to make sure I haven't sort of sprung this on you, that you
12 get a chance to think about it and talk about it. So --
13 because also there's a devil in the details in terms of
14 discovery rulings and what -- how a process would work. And
15 I think that, again, you can sort of borrow from this sort
16 of magistrate and a District Court judge kind of paradigm in
17 the sense that these are -- somebody's empowered to do this.
18 And if there's something that somebody needs to go to the
19 mat on, you can -- that's part of the case, you come here.

20 And -- but obviously, you -- not everything in the
21 first -- things in the first instance wouldn't. But -- so
22 what I'd like to do is maybe give you a chance to think
23 about it for a few minutes, and then maybe even talk to one
24 another about how you think it would work, because I realize
25 the devil is in the details, just like it is in discovery

1 generally. So I don't want to be -- I promised myself if I
2 became a judge, I wouldn't become blissfully ignorant that
3 that sounds like a great idea, and then exit stage right,
4 your arms in the air, thinking this is all fantastic, and
5 leaving the parties with a big mess. I don't want to do
6 that.

7 Again, if I think we weren't spending so much time
8 and money here in the process that we're involved in, I
9 wouldn't suggest this at all. But I -- at this point, it
10 might be more efficient to have somebody.

11 So here's what -- I understand we have some issues
12 we need to talk about today to continue to move forward. So
13 I'm not -- we'll get to those. But what I thought I might
14 do is give you a couple minutes to talk amongst yourselves
15 and then talk with each other about what something would
16 look like. Because it could be that your -- that this idea
17 actually does really -- when you think about it a little bit
18 more carefully, it does actually work. It could be that it
19 has some snags and you say, "Well, we can already see we
20 have some problems." So I'd like to get your thoughts on
21 that.

22 I mean, the other possible way to do is to just
23 throw it out, have you think about it, and have a follow up
24 conference. My thought is it's not that complicated. So
25 since we're here, in the interest of moving things forward,

1 that it's worth at least a conversation, if that makes
2 sense, unless somebody has a better suggestion.

3 MS. SCHWEITZER: Sure. We're happy to take a
4 break and then we can certainly do it. I think to address
5 your idea of being in the loop or in the know --

6 THE COURT: Right.

7 MS. SCHWEITZER: -- or not being out of the know,
8 I think that the progress reports have been very helpful, if
9 not to bring final clarity, at least to provide information
10 so people have a baseline of what it is, so --

11 THE COURT: No, I think -- this is what you have
12 to do. Discovery disputes are very labor intensive, but
13 there's a reason they are, because it's the right way to do
14 it, to tee things up, and to make a record. And no, this is
15 -- again, I know every judge has a different view about
16 these things, but having been involved in civil litigation,
17 this is what's required when you have certain circumstances.

18 So I have no illusions that -- about you needing
19 the attention, and about the issues being important. That's
20 -- it is what it is, even though judges are never excited to
21 have discovery disputes, they are very important. They are
22 how you -- how the case -- it's the first part of making the
23 record that ultimately appear in front of the Court.

24 So I agree with you. And so when I mentioned the
25 letters, it's just a reflection of how complicated and

1 protracted the discovery disputes are in this case. And so
2 thinking about that is sort of what's led me to think about
3 maybe there's a -- maybe having somebody who's essentially a
4 more hand on referee to deal with things on a more day to
5 day problem, rather than save them up, may be helpful.

6 So let me give you a few moments to chat, and then
7 just -- I'd say knock on chamber's door and I'll come back
8 out.

9 MS. SCHWEITZER: Great. Thank you, Your Honor.

10 THE COURT: Thank you.

11 (Recessed at 11:42 a.m.; reconvened at 12:25 p.m.)

12 THE CLERK: All rise.

13 THE COURT: Please be seated. So we're back on --
14 excuse me, on the record for BSG Resources Limited, Chapter
15 15 case, after giving the parties a brief opportunity to
16 chat about discovery and the big picture of how best to move
17 that forward, including the possibility of appointing
18 somebody to serve as a kind of special master.

19 So what can you tell me about where you are?

20 MR. LASTOWSKI: There's been an agreement on a
21 process. I may have the numbers wrong, and I'm sure I'll be
22 corrected, but by Thursday, midday, the parties are going to
23 exchange names of potential -- are we calling this a special
24 master? A special master.

25 THE COURT: Well, I'll leave it to you to come up

1 with an appropriate title --

2 MR. LASTOWSKI: Appropriate.

3 THE COURT: -- but I would certainly think that
4 that's one way to look at it. There may be others.

5 MR. LASTOWSKI: Yeah. We'll exchange names.
6 People can object, and ultimately on Friday, we'll get you a
7 list of names and it will be a blind list. You won't know
8 which party --

9 THE COURT: Whose is whose and I'll just pick one.

10 MR. LASTOWSKI: Exactly. And you can designate
11 someone.

12 THE COURT: All right.

13 MR. LASTOWSKI: Then subject to a conflicts check,
14 that that person could be appointed by Your Honor. I had
15 requested, and Vale's counsel agreed, I'd like whoever is
16 elected to make a disclosure as to any connections that
17 person may have with either the clients in the case or with
18 the law firms.

19 THE COURT: All right. That makes sense. Do you
20 want me to appoint a -- instead of one and a backup, just in
21 case somebody does have a conflicts check?

22 MR. LASTOWSKI: I think so.

23 THE COURT: Conflicts -- issue that arises --

24 MR. LASTOWSKI: That would be prudent. I will --

25 THE COURT: -- so we don't have to do this all

1 again. All right.

2 MR. LASTOWSKI: I will say, a theme among us when
3 we were discussing this is dispatch. We really do want to
4 move this along. So a backup is a good idea --

5 THE COURT: All right. Yeah. So we'll --

6 MR. LASTOWSKI: -- rather than starting the
7 process --

8 THE COURT: -- consider it sort of like a backup.
9 You know, we do that all the time. Stalking horse bidder
10 and then you have a backup just in case something doesn't
11 pan out.

12 MR. LASTOWSKI: Exactly.

13 THE COURT: So --

14 MR. LASTOWSKI: The other issue that came up is
15 the scope of what could be presented to the special master.
16 And Vale had requested that the only things that would be
17 presented to the special master would be things that have
18 already been before the Court and as to which there's an
19 existing order. So, for example, Your Honor had ordered
20 certain discovery and the scope of discovery, et cetera, et
21 cetera. And to the extent there were issues under that
22 umbrella, they would be addressed at the special master.

23 So for example, assertions of privilege arguments
24 as to proportionality, the appropriateness of search terms.
25 What Vale did not want the special master to address was new

1 issues. And they gave us examples -- for example, if we
2 wanted them to answer contention interrogatories earlier
3 than 30 days before the end of the close of discovery,
4 that's something we would have to present to you.

5 Suddenly, we learned that was a new privilege we
6 would have to assert. That would come before Your Honor.
7 The examples they gave were very narrow ones. So I'm
8 confident that if anything came before you, it would be more
9 like the two hearings prior to ours today --

10 THE COURT: Right.

11 MR. LASTOWSKI: -- than we're conducting right
12 now.

13 The next thing that came up in terms of procedure
14 is how would the special master present his findings and
15 conclusions. And we agreed that that person would prepare a
16 report and a supporting order to present to Your Honor, but
17 it would be circulated -- well, I assume it would be filed.
18 But the parties would have a set period of time, perhaps
19 three days, to file an objection that Your Honor would
20 ultimately here.

21 THE COURT: So, essentially borrowing a bit from
22 this magistrate procedure, meaning that if there's a report
23 and recommendation by a magistrate --

24 MR. LASTOWSKI: Yes.

25 THE COURT: -- there's a procedure to file an

1 objection. Although, this would be shorter, because it's in
2 the context of --

3 MR. LASTOWSKI: Yeah.

4 THE COURT: -- discovery.

5 MR. LASTOWSKI: If we were to follow a magistrate
6 procedure, it would prolong things. And again, the theme in
7 our conversations was let's move with dispatch and try to
8 move this along.

9 In conjunction with proceeding towards appointment
10 of a special master, we had offered to Vale, and they
11 agreed, that we would have a face to face confer with them
12 before our first meeting with the special master. My idea
13 was, and it's not a very original one, it's an obvious one,
14 is that we could just sit down. We have a spreadsheet that
15 identifies their document requests. There has been some
16 progress in the document production. Maybe we can make some
17 progress in terms of an agreement as to what's been
18 satisfied, what remains to be done. But then we could
19 present the special master was a point counterpoint. This
20 is their position. This is our position. Which would make
21 it much more efficient for the special master to review the
22 issues.

23 I may be naïve, but I think the --

24 THE COURT: Well, you're sorting through and sort
25 of giving an update, right?

1 MR. LASTOWSKI: Yeah.

2 THE COURT: So I just got a case transferred to me
3 from another judge and there were a bunch of motions, things
4 that hung around for a while, and essentially what sort of
5 happened was a refresh, which is, well, where are we now?
6 There was an amended complaint. So you're essentially
7 trying to bring the disputes current so that you don't fight
8 about things that are unnecessary.

9 MR. LASTOWSKI: Correct. And Vale had a concern
10 that, oh, well, we're going to proceed before this special
11 master, this should not delay your production. And we said
12 with emphasis, "By all means, no. There will be no
13 interference." We're presenting on a dual track. We have
14 multiple motives to get this production done, not the least
15 of which is we -- you know, we want to get it done so that
16 we can present it to the special master or to Your Honor,
17 saying, "Look, with regard to this request, we produce
18 this." And, you know, it's really not cost effective. It's
19 not proportional to proceed any further.

20 We have strong motives to proceed with dispatch.

21 THE COURT: Well, yeah, I think that the rulings
22 that have been made, and the hearings that we've had are all
23 the background that -- that's where we are, right? That's -
24 - so we're not -- we're moving forward, not moving
25 backwards, and that you'll -- you're continuing to work on

1 the issues that have been discussed, which are everything
2 from the scope of production, the timing of production, the
3 search terms. Privilege logs haven't been a point of focus,
4 but I imagine they might be, and other things that we've
5 discussed.

6 MR. LASTOWSKI: A third production.

7 THE COURT: And third party issues as well. So I
8 think that that's right. Anything else? I had one comment
9 that I'll -- but let me wait until I hear anything else from
10 you.

11 MR. LASTOWSKI: If I may, Your Honor. There's a
12 mild caveat from my side and that is that we've employed
13 certain search terms, which -- which has been the subject of
14 some dispute.

15 THE COURT: Right.

16 MR. LASTOWSKI: But we believe in good faith that
17 they're sufficient. If the special master were to suddenly
18 expand those, that would necessarily create some delay
19 because we'd have to do searches and review new documents.

20 THE COURT: Well, I mean, that's --

21 MR. LASTOWSKI: Yeah.

22 THE COURT: -- the search terms debate is what it
23 is.

24 MR. LASTOWSKI: Yeah.

25 THE COURT: And it would have ramifications in a

1 lot of ways.

2 MS. SCHWEITZER: Did Your Honor want to add
3 something in --

4 THE COURT: Well, let me hear from you and then
5 I'll -- well, I can remove the suspense because it's not
6 particularly worthy of suspense. So one is I assume parties
7 could share cost. And the second is we're talking about new
8 things. I guess my question -- so discovery things can be
9 compartmentalized and they can be new, but they're always in
10 context.

11 So if, in fact, there are decisions and
12 conclusions reached by the special master, people can either
13 live with them, they can take a run and say, "Well, we want
14 to file an objection." My question is I don't want to get
15 bogged down in the idea of what's new and what's not new.
16 And so if somebody has a -- things may be related but may be
17 sort of a new permutation of a related idea. So I guess my
18 thought would be that in the -- I'm wondering whether it
19 makes more sense in the first instance to have the special -
20 - you tee something up with the special master.

21 If you both agree that it's something that
22 shouldn't be there, I suppose then you could send it on to
23 me. But you could also get the wisdom of the special
24 master, who's at that point, I would assume he or she has
25 gotten some context. Because if you have a right to come to

1 me anyway, that would be the main concern, right?

2 So you have a right to file an objection, which
3 means that I look at it. So that was my question of how
4 that works, if there's that procedural protection of whether
5 it makes sense to delineate a new category or whether that's
6 going to be a flash point that -- for debate that you don't
7 want to really get into.

8 MS. SCHWEITZER: So it's a great point, Your
9 Honor. I actually wanted to address this new versus
10 existing, to step back and -- associates hard at work, who
11 are already texting that apparently sometimes these are
12 called examiners in Bankruptcy Courts instead of special
13 masters. We'll spend time figuring --

14 THE COURT: Yeah. We can figure out what the
15 appropriate authority is, right.

16 MS. SCHWEITZER: Exactly.

17 THE COURT: But I think that that's right.

18 MS. SCHWEITZER: But the one idea is that
19 apparently that the idea of the parties consent to this,
20 which we all do support this, but the idea of being that the
21 Court is the ultimate arbiter --

22 THE COURT: I think that has to be that way.

23 MS. SCHWEITZER: All right.

24 THE COURT: I think that's right. But what I want
25 to do -- one thing that is -- concerns me is there seems to

1 be two ways to deal with this. One is to start having you
2 come in every week. The other is to -- because I'm afraid
3 that the -- a month long delay, while it's a prompt
4 detention from the Court's point of view, it's a problem
5 from your all point of view, because you're trying to do
6 things in real time.

7 MS. SCHWEITZER: Right.

8 THE COURT: So -- but I do think it doesn't change
9 the fact that it has to be -- and that's why I -- I'm trying
10 to take some of the concern out of the new concept to say if
11 you have a right to come here, you have a right to come
12 here. And so that sort of should allow people to not feel
13 like they're giving their -- in an appropriate way, giving
14 their rights away to be heard.

15 MS. SCHWEITZER: Right. And the way we had
16 discussed it isn't necessarily new versus old, but we have
17 document requests that have been made, and there have been
18 objections, and Your Honor has entered rulings about what is
19 the proper scope of the document request to be responded to.
20 There are issues that have already been teed up and dealt
21 with by Your Honor. And so the way we would think of this
22 special master is Your Honor has ruled on the parameters.
23 Your Honor has made definitive rulings about scope, and
24 what's responsive, and the parties' duties.

25 Other issues are whose documents are in their

1 control; documents can't be redacted for commercially
2 sensitive. The purpose of the special master is -- or
3 examiner, or whatever it is, is not to relitigate questions
4 that Your Honor has decided. It's that Your Honor has given
5 guidance and actually given orders defining relevant scope,
6 duties, and that the special master in our mind implements
7 those.

8 So if they say --

9 THE COURT: Yes. Although the special master is
10 going to have to decide in the context of those what's come
11 before, what's going to happen with new flash points in
12 discovery, because that's the wonder of discovery, right?
13 You have issues that are similar, but different because they
14 come up in different contexts. There may be different
15 issues about cost benefit analysis. There may be other
16 things.

17 So, for example, I saw -- there was a discussion
18 in the letter about, well, we're talking about search terms.
19 We could solve this whole problem by looking at -- just get
20 this domain of e-mails. And so I have no doubt that there
21 would be permutations that are -- whether you call them new
22 or new enough, that are going to have to be dealt with. And
23 just part of the benefit is if you're going to have somebody
24 who does this, they get steeped in the facts and, therefore,
25 can make intelligent decisions. And it's almost like AI,

1 where the more decisions and calculations you make, the
2 better your decision making capacity is.

3 So but again, I think it's got to be crystal clear
4 that people have a right to be here and that you -- this way
5 you can get a more prompt response in more real time on
6 dealing with issues, and sort of to drill down on the
7 particulars of certain things. But if you want to come here
8 -- now, if everything ends up here, then this process will
9 be a failure.

10 MS. SCHWEITZER: Right.

11 THE COURT: My thought is that if you get somebody
12 who's respective, who's a third party, that that won't be
13 the case, and that the benefits of the more real time
14 examination will outweigh any potential duplication. That's
15 my hope. And I'm getting the sense that's your hope as
16 well.

17 MS. SCHWEITZER: Yeah. I think that's shared hope
18 by all parties. And certainly, we -- we're happy to hear
19 that the STR is willing to meet and confer. What we said is
20 they can confer today, tomorrow, next week. This should not
21 hold up. We should not use things to hold up the next
22 process. I assume that's not what they were suggesting,
23 that it's again to --

24 THE COURT: No, I think -- again, the rulings and
25 hearings that we've already had passed is all -- it is what

1 it is. And so I don't think any of this changes it, it just
2 gives us a more -- hopefully a more -- a process that is
3 nimble enough to adapt in real time to issues and get you
4 the answers you need quickly.

5 MS. SCHWEITZER: Yeah. And I think on cost --
6 just to address it, I think that we're fine splitting the
7 cost. We obviously have had concerns all along about
8 discovery, so we would reserve our right to seek relief
9 later on. But it's (indiscernible), certainly we're
10 prepared to split the cost of the special master.

11 He has one more thing to add.

12 THE COURT: Sure.

13 MR. ROSENTHAL: I was just going to say, Your
14 Honor, I think the way we see it in terms of what the scope
15 of the special master appointment is is on the July hearing,
16 we were before the Court with respect to our document
17 requests. And the Court's made in July through October a
18 number of rulings with respect to that in terms of
19 sustaining -- you know, those that you sustained, possession
20 of custody and control, those issues.

21 And the way we see it now is the implementation of
22 that, which does require kind of nuts and bolts detail, such
23 as search terms, that can all go to the special master.

24 THE COURT: Well, the search terms are not --
25 search terms are huge, right? So --

1 MR. ROSENTHAL: Of course.

2 THE COURT: -- the search terms are a big deal.

3 And again, all of these things impact all of these other
4 things in the sense that search terms are a bit like whack a
5 mole. So you think about as an intellectual matter what the
6 right search terms are, and then the issue might pop up and
7 the issue of proportionality later. So that's why these
8 things -- that's why I'm -- the only thing I'm hesitant
9 about anything that I've heard is the notion of new.

10 Again, my thought is that if folks have a right to
11 be heard in a court, which I think is crucial and makes
12 perfect sense, then I think that distinction becomes less
13 important.

14 MR. ROSENTHAL: So we have what I think is a
15 pretty clear and easy definition of new, and that's why I
16 just wanted to explain to the Court what our thinking is.
17 The way we see it is Your Honor has kind of built the
18 umbrella, which is with regard to our document requests,
19 you've made a number of rulings that we think really kind of
20 build that framework and now it's a matter of getting that
21 all implemented, and there are other disputes as we've just
22 discussed with respect to that.

23 And we agree that getting the special master's
24 insights in the first instance, hopefully, is also the last
25 instance because, you know, if it's somebody respected, we

1 don't bother the Court. What we're thinking of is if it's
2 things that don't even fall within the umbrella of our
3 document requests at all.

4 THE COURT: So, yeah, I think maybe what we could
5 is say this is --

6 MR. ROSENTHAL: Well, for the document requests
7 that have already been teed up with the Court, because, for
8 example, if there are future document requests that, you
9 know, they want to pursue motion practice with regard to
10 document requests that they will want Vale, we just get, at
11 least for something like that, in the first instance, we
12 ought to get some basic guidance from the Court.

13 Now, maybe there'll be an issue that we all say,
14 You know what? We have a special master in place. We all
15 respect the special master. Let's go there.

16 But absent consent, I think for something that is
17 outside the umbrella that you've built --

18 THE COURT: So let me see if I can be practical
19 about this. I think this is for anything that is currently
20 in front of me when people say, Well, this is what we've
21 been fighting about. We have other things that need to be
22 addressed.

23 Again, my backdrop to all of this is, is as long
24 as people can be heard in court, and so like many times in
25 litigation, there's always a discovery funnel. So, this is

1 almost kind of a funnel to try to identify the kinds of
2 things that need to be addressed here.

3 And so, nothing changes that right. And so, I can
4 certainly understand if parties say, Well, we're going to
5 tee up another issue. We just want to let you know what's
6 coming. We think this -- we think the guidance from the
7 Court in the first instance, since it hasn't been addressed,
8 is in similar -- I'm fine with that.

9 And if possible, then I might say, Well, what --
10 have you been looking at what's happened with the special
11 master/examiner/whatever appropriate title. This seems to
12 be somewhat similar and it might be helpful to get that
13 guidance in the first instance with you reserving your
14 right.

15 So, why don't we see how that plays out, but you
16 reserve all your rights to say, No, it's got to be here in
17 the first instance. I don't have a problem with that.

18 MR. ROSENTHAL: Okay. I think that's fine with us
19 then, Your Honor. Thank you.

20 THE COURT: That's fine. Because, again, I think
21 it's -- I sympathize and it's very hard to know if conflicts
22 are going to come up. So we'll try to be practical about
23 it, and my intent is not -- my intent is, whenever I see
24 these things, I know that people have spent a month working
25 very hard on things and you get to a certain point and then

1 you say, Well, we need some guidance, and, in fact, the
2 guidance is really 30 days too late, because we've been
3 working under various assumptions where we don't agree, and
4 that's where my concern is about.

5 I didn't want to impose this burden, in terms of
6 cost on folks, except now, I think at this point, your -- my
7 bandwidth to give you the kind of more immediate response is
8 -- that's why I'm concerned about that.

9 MR. ROSENTHAL: One point, Your Honor, on the
10 comment you just made, and it actually picks up on something
11 that Mr. Lastowski just said, which is that, you know, they
12 may make an argument to the special master that, well,
13 they've already done these searches and they've already kind
14 of produced this and now that should be enough.

15 One thing that we're all clear on -- and I want it
16 on the record -- but when we were talking out in the hallway
17 is that anything that they're doing now is kind of at their
18 own risk. And I think Your Honor used a similar phrase
19 previously, which is, we think they're doing things wrong
20 and they think they're doing things right. And if they
21 utility can establish on the merits that their way is right,
22 that's one thing, but to say a month from now --

23 THE COURT: Well, again, rulings are rulings and
24 they mean what they mean. I know the devil is in the
25 details and people -- this wouldn't be the first or the last

1 when people have different views about when a Court gives
2 you a discovery ruling and what it means.

3 But, yeah, I mean, it is what it is, so there's
4 nothing about this process that would change the rulings
5 that have been made. I think that that is -- that would
6 give the person coming in, he or she, a really totally
7 untenable job, and you might find -- have trouble finding
8 somebody who'd be willing to take it under those
9 circumstances, because then everything is a free-for-all.
10 So, that's not the intent.

11 This is supposed to make things more efficient,
12 rather than less efficient. So -- all right. So, I --
13 so -- but let me make it clear, again, I think it's clear
14 that the conclusion to the special master on particular
15 discovery issues are you'll work out, essentially, an
16 objection process. If there's an objection, then come to
17 me, and you can also figure out, to the extent that
18 something may end up in front of me, that there may be a
19 process whereby I get copied on -- I get -- you'll decide at
20 certain points at things that the special master makes sure
21 that I get copies of them anyway, even if they're not
22 subject to objection, just to keep myself up to speed, but
23 there may be things where that's not a good idea if you're
24 having some can't conversations, and I'll leave it to you
25 all to figure that out. But I would imagine if the

1 individual who's appointed is making decisions and they
2 aren't objected, it's probably worthwhile and if those are
3 memorialized, there's no additional work to send me a copy,
4 then it'll be the way that I keep myself up to speed for any
5 issues that might eventually come up here.

6 And so, you'll give me a number of names. You
7 won't tell me whose names they are. I'll pick a name and a
8 backup. I would assume that you will have these people's
9 CVs attached and that will give me some basis -- I'm sure
10 they'll all be really qualified folks -- and I'll just do my
11 best to pick somebody who I think is most suitable among,
12 I'm sure, all very suitable candidates.

13 And I would imagine, then, we'll need an order for
14 this, and I appreciate your flexibility. And, again, if
15 people can think of ways to improve the process -- I'm
16 trying not to stand on ceremony; I'm just trying to be as
17 efficient as possible -- and I think the order would have to
18 reflect that all parties consent and that, again, comes back
19 to the notion that if there's an objection to a decision of
20 the, what we're calling the "special master" that that comes
21 here and that will be heard de novo, not with any sort of
22 deferential standard, and it'll have to stand on its own and
23 that's that.

24 Is there anything else that we should talk about
25 in connection with this process?

1 MS. SCHWEITZER: No, Your Honor. We can work up
2 an order that we can work consensually with and submit that
3 on Friday, along with the proposed names, just because you
4 would need that to appoint the person anyway.

5 THE COURT: Right. And I would imagine that order
6 would also have (indiscernible) discuss sort of initial
7 meet-and-confer as to what -- where things stand so you
8 can -- and I'll leave it to you, if you want to put in the
9 order how you sort of want to have sort of an initial first
10 contact with the person who's appointed, whether it's
11 written submissions, whether it's a get-together, how you
12 want to do it, whether it's a binder of some of the orders
13 and letters. That may be the first thing before you have a
14 conversation.

15 As a matter of fact, I think that's probably a
16 very necessary things for whoever's coming in. So, with
17 that, any other thoughts or comments?

18 (No verbal response)

19 THE COURT: So, the question, in light of all this
20 is, what is a meaningful -- what can be meaningfully -- can
21 we and should we meaningfully turn our attention to today,
22 in terms of the issues that are raised by the letter --
23 letters, I should say.

24 MR. LASTOWSKI: Your Honor, I'd like to address
25 what's a very simple issue, but it's one that I'm happy that

1 I have to offer to the Court, and that is the fact that we
2 had a deadline of October 26th and we didn't make it.

3 When our case was called, I felt like I do in a
4 dentist's waiting room when the nurse comes out and says,
5 Mr. Lastowski, it's your turn, because it's not something
6 that I -- I don't know if I'd ever done it before, and it's
7 something that makes me very uncomfortable.

8 That deadline was set, and we took it seriously.
9 At the time that that deadline was made, we believed in good
10 faith that we could meet it, but as is sometimes the case,
11 you don't know what you don't know, and it's what Donald
12 Rumsfeld would call the "unknown unknown" that led us to be
13 overoptimistic.

14 I will say that the backdrop was that we had an
15 October 31 deadline for the voluntary standstill that was
16 agreed to by Vale. In our own minds, we had really hoped we
17 could get everything done before that date and that they
18 might extend that date.

19 We didn't make that deadline and they haven't
20 extended their deadline, but we've learned, as we've gone
21 along, this was a process that was, you know, very difficult
22 for us and you do learn by doing. For example, when you
23 have an estimated number of documents you have to review, in
24 the abstract, you can say, Okay, we're going to review these
25 and produce them in three weeks.

1 But experience tells you that, you know, there's a
2 thousand documents. Well, how many pages are in each
3 document? What type of documents are they? Is it 100
4 invoices or is it a 100-page contract, which has to be
5 reviewed for key terms?

6 We simply underestimated the amount of time that
7 it was going to take us to do this.

8 THE COURT: I did see in the two letters, there
9 were some updates of various numbers, and so I was just
10 trying to get a sense of what the status is.

11 So, let me find the right letter here. So, I
12 think it's Docket Number 73. I think it's the second letter
13 of November 2nd and it has a production -- so, I'm trying to
14 figure out how many pages have been produced thus far. I
15 didn't get my calculator out to sort of add that all up. I
16 mean, twenty-something, I guess, in the low twenties?

17 MR. LASTOWSKI: I was told it's 24,000 pages.

18 THE COURT: Twenty-four thousand, all right.

19 And what do you understand to be sort of -- I did
20 see there was a reference to how many things are still being
21 reviewed for relevance with zero. So, I'm wondering how
22 many things are still in the queue and what the immediate
23 plans are.

24 MR. LASTOWSKI: We have produced 4,000 documents
25 and there are 8,000 yet to be produced. The ones yet to be

1 produced, though, are relatively far down the pipeline.

2 I think Your Honor was told what the review
3 process was and there's multiple steps. The penultimate
4 step is Duane Morris review for, you know, for applicable
5 privilege, non-GDPR privilege, and then the documents are
6 returned to BDO for what they call a "senior final review"
7 to make sure -- just to double-check.

8 So, 4,000 have been produced. Eight thousand are
9 in the pipeline, but with Duane Morris right now and after
10 we review those, we send them to BDO for a final senior
11 review and then they're produced to Vale.

12 THE COURT: And is that being done on a rolling
13 basis or is that sort of going to be done as a larger --

14 MR. LASTOWSKI: Everything is done on a rolling
15 basis.

16 If I may, Your Honor?

17 THE COURT: Sure.

18 MR. LASTOWSKI: Mr. Hitchings has been more
19 involved with this than I have, so --

20 THE COURT: Yeah. No, I'd be happy to hear.

21 MR. LASTOWSKI: I'm repeating his numbers, you may
22 as well hear it from him.

23 THE COURT: All right.

24 MR. HITCHINGS: Good afternoon, Your Honor.

25 Jarret Hitchings at Duane Morris.

1 So, just to clarify, there are 800 documents --
2 I'm sorry -- 8,000 documents, as we say, in the pipeline
3 that's in various different rolling stages. Some of those
4 documents have been fully reviewed for privilege and
5 everything else and they're just in the process of being
6 packaged for delivery. That's not as simple as copy, paste,
7 print. It involves just some technical procedures, so there
8 is a little bit of a delay there.

9 Some of those documents have been -- of those
10 8,000 have been fully reviewed for privilege, but are in the
11 process of being, as we call them "QCed," because you have
12 10 reviewers, you need to make sure that they're being
13 reviewed in a consistent and conformed fashion. And so,
14 that's not to say that we have 8,000 documents -- we've
15 produced 4,000 -- there's going to be another four, eight,
16 twelve weeks for production. Those are very far along and
17 we do anticipate that of those 8,000 there should not be an
18 issue with reaching the target deadline of December 2.

19 THE COURT: All right.

20 MR. HITCHINGS: And it's also important to know
21 what those documents do not include. They do not include
22 documents that are being received from third parties, to the
23 extent those documents are received at any point. They
24 don't include documents that are outside of the data sources
25 that were not identified in our August 27 letter.

1 We've kind of looked at this as phases. If you
2 recall, there were about six or eight data sources that we
3 identified. That makes up the set of the 3.7 or 1.2 million
4 documents that have been in the universe and from their
5 report down, the pipeline is getting much, much shorter, and
6 that's where we are.

7 But to the extent that we receive further
8 documents, to the extent that there are other data sources
9 that are searched, those would fall outside of the timeline
10 that we've been discussing.

11 THE COURT: All right. And so one of the things
12 that was mentioned was sort of what Vale, I think, called
13 "low-hanging documents," which are things that were in the
14 Gurnsey (phonetic) proceeding, and I assume that those
15 documents are all part of this universe, right; they're part
16 of the data sources?

17 MR. HITCHINGS: Correct.

18 THE COURT: All right.

19 MR. HITCHINGS: And to the extent the documents
20 had not been in our possession because they were either
21 maintained by the Gurnsey Court, I do understand that we now
22 do have authority from the Gurnsey Court that those
23 materials can be provided. So, we're in the process of
24 gathering those and those will certainly be produced, I
25 hope, on an expedited basis; if not, as part of the rolling

1 production.

2 THE COURT: All right. So, let me hear from
3 Vale's counsel about this. And so, my question is, in
4 discovery, it's like an aquatic creature; it's always
5 important to move forward, lest you sink to the bottom and
6 perish. So, I understand there certainly are things that
7 could be said about the past, so my question is, what's your
8 take on the future?

9 I certainly understand what's in your letter.

10 MS. SCHWEITZER: Thank you, Your Honor.

11 And you have spared the motion of re-hashing some
12 of the things that we've seen. So, I don't need to put a
13 further marker down on our feelings of prejudice --

14 THE COURT: No.

15 MS. SCHWEITZER: -- and where we've been at.

16 I think that it's helpful for the administrator
17 to, again, confirm where they're at. In truth, we've had --
18 the progress reports have been helpful, but the numbers are
19 hard to reconcile. So, we have new numbers down.

20 I think that it's helpful, also, that the joint
21 administrators have confirmed that they expect to hit a
22 December 2nd deadline, because we've been very concerned
23 about, not just extensions, but extensions without
24 understanding, so that they expect that they will be held to
25 hitting that deadline.

1 THE COURT: Well, let me just sort of -- I --
2 we're going to treat that as a deadline the same way that
3 you should treat any deadline; it's by court order, meaning,
4 if that's not going to be met, then in advance of that
5 deadline, a letter needs to be submitted saying, Here's the
6 problem.

7 Now, it could be that you had those conversations
8 in the first instance with whoever's appointed, but I think,
9 as it's a court deadline, that would need to come here to
10 get an extension. I'm certainly -- I don't think that sort
11 of global issue, I think I've got a pretty good grasp on
12 that, so I think that's right. So, we'll treat December 2nd
13 as the modified deadline, all right.

14 MS. SCHWEITZER: Thank you, Your Honor.

15 What they refer to as the "third-party documents"
16 that they say are -- we would call up the documents that
17 Your Honor has found are under your control, that I
18 understand that they're still in the process of collecting
19 them, but --

20 THE COURT: Well, this an awkward, right. So,
21 possession, custody, or control, there's a footnote in the
22 order that says -- that explains very clearly what the state
23 of the law is on that, and it's the ability to get them.

24 I did see that -- I tweaked one of the orders to
25 the extent that it found that they had them, it said to the

1 extent you have possession, custody, or control, you have to
2 produce them. So, that's really -- I wasn't trying to give
3 anybody a "get out of jail free" card, but at the same time,
4 I don't have a specific -- there was one party where there
5 was a request for me to make findings and I did make
6 findings as to that party.

7 But as to the other parties, sort of the legal
8 standard that you were referencing in your papers, I
9 adopted, but I didn't make factual findings just because we
10 didn't -- that's not where we ended up. So, it's
11 complicated, but I think everybody knows where we are.

12 MS. SCHWEITZER: Right. And the good news on that
13 is, apparently, once the letters were sent and the requests
14 were actually made, people responded, and the progress
15 report indicates they actually have documents that they
16 already have received. So, I hear them saying that those
17 are not part of the December 2nd production, but to the
18 extent that they're in hand, we would expect a report on
19 that, as well, in terms of volume and when those would be
20 produced.

21 THE COURT: Yeah.

22 MS. SCHWEITZER: Because, depending on volume,
23 maybe they should come quickly, as well.

24 And then we have, just for the record, we have
25 asked for them for copies of the correspondence with third

1 parties so that we (indiscernible) with these other folks
2 that they've reached out to for documents just so that we
3 understand what the situation is and if anyone is putting up
4 objections or is keeping documents, we know what that is --
5 not for Your Honor today.

6 The one comment they made right now, which I'm not
7 actually quite sure what it means -- it would be helpful to
8 get clarity on -- is Mr. Hitchings said that this one
9 million, sometimes there's three million documents they
10 search and intend to produce by December 2nd, are the -- the
11 sources that they've identified, but there are other
12 documents outside of those data sources that they're not
13 holding themselves to. And I'm not quite sure what universe
14 of documents we haven't even begun to scrape the surface on,
15 other than the ones covered by Your Honor's order. So, I
16 don't want to find out there's things that are left behind.

17 THE COURT: Let me hear from the other side.

18 I have thought about it, but it's much better to
19 hear your thought than my less --

20 MR. HITCHINGS: Your Honor, the comment was only
21 to suggest that if the special master, through that process,
22 if there are broadened categories of documents or other
23 databases uncovered or determined, that those would be
24 included.

25 My point was just that we had identified the set

1 of documents that were within the target for December 2.

2 THE COURT: All right. So, my understanding --
3 what I'm not quite sure is it's often common that folks say,
4 I'm producing documents. I've identified the sources where
5 I think such responsive documents would be and here, they
6 are. And that's one potential meaning for what you just
7 said.

8 Another is to say, Well, we've identified these
9 sources as places. There may be others, or we're sort of
10 holding off on others, but we've identified these. So, I'm
11 not sure if you can give me any wisdom.

12 MR. HITCHINGS: I think, for example, we've
13 identified and said we would be searching certain mailboxes
14 from the joint administrators, but, for instance, we're not
15 searching every employee at BDO that's working on the
16 matter.

17 If for some reason and there was a special master,
18 Your Honor determined that those mailboxes needed to be
19 searched for whatever reason, my point is only that that is
20 not included in the universe of documents currently under
21 review. Not that it should be --

22 THE COURT: Right.

23 MR. HITCHINGS: -- but it's just not. And for
24 purposes of December 2, anything outside of that universe is
25 not included in that timeline.

1 THE COURT: And that universe is reflected in --
2 and I know you mentioned the bit of correspondence.

3 MR. HITCHINGS: It's in the August 27 letter to
4 Your Honor and we identified the various data sources.

5 THE COURT: And my understanding, if I remember
6 that letter correctly was, this is after, consistent with
7 their professional obligations, we believe these are the
8 sources that are appropriate to search for to provide
9 responsive documents.

10 MR. HITCHINGS: Correct.

11 THE COURT: All right.

12 MS. SCHWEITZER: Thank you, Your Honor.

13 They addressed another one that was on our list
14 was to get confirmation of the status of getting the Gurnsey
15 documents. So, we're pleased to learn those are coming to
16 us and will be produced to us, that there's not an issue
17 there.

18 And then I think that was certainly not every last
19 thing, but we'll save some for the special master. I think
20 that the only other thing and recognizing where we're at, is
21 do we put another placeholder hearing in front of Your
22 Honor?

23 THE COURT: I have no problem doing that just so
24 you don't have to scramble for time. My only -- and I maybe
25 should just keep my yap shut -- but the only thing I will

1 say is, in conversations about search terms, search terms
2 can be very, very tricky and transparency always -- well,
3 it's messy in the beginning and always pays off in the long
4 run.

5 Obviously, the law is what it is. You have on the
6 one hand what's responsive and what's -- you know, so there
7 was a debate in the letters about certain terms and the
8 inclusion of certain things, whether it's company or the
9 name of an individual, and on the other hand, there was sort
10 of a different part of the same conversation will say, well,
11 here's the yield we're getting and we're concerned about the
12 size of the yield in terms of proportionality.

13 So, there are lots of ways to address that. Some
14 of it is to think outside the box. That once you get
15 things, responsive documents and you're able to sort of get
16 a more informed factual thing, then you might say, Well,
17 we're going to put a pin in this for now and try to identify
18 more particularly what we think we want to make sure we've
19 covered, whether it's particular email boxes, whether it's
20 particular date ranges, or other things.

21 Again, I say this to somebody who's not steeped as
22 steeped as you are in the discussion, but just trying to
23 think of practical ways to address the problem, because,
24 right, the rules sort of encompass a lot of different
25 concepts -- responsiveness, burden, all sorts of things.

1 So, that's one way to think about it, and that's
2 one of the things that the sooner the documents are produced
3 the better, because then they can look at them and say,
4 Well, here's what we're most concerned about. Here's the
5 date range we're most concerned about. Here's the
6 individuals -- we feel like there's likely to be other
7 emails from these people to these other people.

8 So, I'm just throwing that out as ways to think
9 about it. I'm sure that you've already been doing that, and
10 I may be giving you, you know, ideas that you already have.
11 But just that if you battle in the absolute of the perfect
12 search term versus the yield, it's often a conversation of
13 two ships passing in the night. So, I just throw that out
14 to the extent that as we get documents and begin to review
15 documents, that there may be some practical ways to try to
16 address those issues.

17 MS. SCHWEITZER: Thank you, Your Honor. That's
18 helpful guidance.

19 And I think, quite frankly, that there's different
20 levels to it. In their letter, they had sort of said
21 (indiscernible) factors, here's the list of what we think
22 are relevant. Certainly, that's previously been considered
23 and decided by Your Honor in terms of the requests are much
24 broader than that. So, I think we have some mismatched,
25 likely --

1 THE COURT: Right. No, the rulings are what they
2 are, right.

3 MS. SCHWEITZER: -- in terms of what scope and
4 then how to get to that scope.

5 THE COURT: Right.

6 MS. SCHWEITZER: But we completely hear you, and
7 in that effort, tried to meet-and-confer and we'll continue
8 to do so to get the right documents.

9 THE COURT: Well, you also need the more documents
10 you have, the more intelligent decision you can make about
11 what the scope is of what additional things you might want
12 to pursue.

13 MS. SCHWEITZER: Yes.

14 THE COURT: It's very, as you all know in spending
15 enough time in this court, the more things are theoretical
16 issues, then the more people are sort of duty-bound to sort
17 of announce their presence with authority on sort of a much
18 broader scale. So, the additional productions through
19 December will be very helpful, I think, hopefully, on that
20 score.

21 All right. So, we need a date. So today is the
22 4th. Do you want to make it December 4th or do you want
23 it -- how about we do this, I'll give you December 4th and
24 if you think that your focus is on other things in light of
25 where we are, then we can push it off a couple of weeks with

1 the idea that we would still meet before the new year, but
2 we might push it out, say two weeks or so, if that option is
3 useful.

4 MS. SCHWEITZER: The 4th works for us.

5 Does that work?

6 MR. LASTOWSKI: It does, Your Honor.

7 THE COURT: Do you prefer morning or afternoon?

8 Anybody have a --

9 MS. SCHWEITZER: Either is fine for us.

10 MR. LASTOWSKI: Mr. Peters wasn't allowed to bring
11 his phone, so he doesn't have his calendar.

12 THE COURT: All right. So, we'll put it in. And
13 so -- and we'll make it -- once you check, just let me know
14 for morning or afternoon. Right now, I'm fine either way.

15 And I'm also happy if he wants to participate by
16 phone for some of these things so that he doesn't have to
17 make the trip and can sort of stay updated on this.

18 MR. LASTOWSKI: I'm hopeful his participation
19 won't be necessary, but we'll see.

20 THE COURT: All right. But to the extent that he
21 feels like, well, you never know, so I'm open to that.

22 My, as you know doubt have heard from other
23 judges, is that if somebody is actually going to provide
24 evidence and testify, then they need to be here in person.
25 But if it's status, I'm fine with people participating by

1 phone.

2 MR. LASTOWSKI: All right.

3 MS. SCHWEITZER: Should we put the morning as a
4 holder and then --

5 THE COURT: Okay. So, let's say December 4 at
6 11:00.

7 MS. SCHWEITZER: Sure.

8 THE COURT: And I'll put in a backup date of
9 December 17th, which is a Tuesday, also at 11:00, just in
10 case you think you can slide another couple of weeks.
11 Because if you're -- speaking of bandwidth -- if you're busy
12 getting the party who's been appointed up to speed and
13 having conversations with them, I don't want this to
14 distract from those efforts. So, you'll let me know.

15 MR. LASTOWSKI: Thank you.

16 MR. HYMAN: Just to bring you up to speed, Your
17 Honor, as it relates to the District Court proceeding --

18 THE COURT: All right.

19 MR. HYMAN: -- one further comment, and, again, I
20 think this is for the special master, but in arriving at the
21 search terms that were used, it was an (indiscernible) word
22 process. It wasn't just pulling process out of --

23 THE COURT: All right. Well, we're going to stay
24 away from that because I think once those -- those are still
25 waters, but they run deep, so we'll avoid that for right

1 now.

2 MR. HYMAN: We understand that, Your Honor.

3 I think we mentioned last time we were before you,
4 the next filing with Judge Broderick in the District Court
5 was going to be a filing from the joint administrators
6 explaining why they thought it was important that Judge
7 Broderick continue to withhold a decision, pending a hearing
8 on the challenge of the application, which is scheduled for
9 the end of November.

10 We included in that a reference to a request for
11 some guidance from Judge Broderick on to the extent that we
12 need some additional injunctive relief, where we should go
13 to request that relief.

14 THE COURT: All right.

15 MR. HYMAN: And there are a series of hearings, so
16 it's difficult to know however long to get a response back
17 Vale's counsel filed a response a week later on
18 October 25th.

19 I understand they had indicated to Judge Broderick
20 that they didn't think the timing was ripe to determine
21 whether their -- or the right venue for seeking injunctive
22 relief. I think the argument that they made was that if
23 there is an argument -- if there is a determination by Judge
24 Broderick that he should recognize the arbitration award and
25 give the effect of a judgment to the United States, that

1 there's a 30-day stay in place.

2 We'll take them at their word in that pleading and
3 hold them to that 30-day stay. At that point --

4 THE COURT: Well, I'll let that all play out in
5 front of Judge Broderick.

6 MR. HYMAN: At that point, if we haven't heard
7 before, we'll scramble and determine what Court we need to
8 run to.

9 THE COURT: Well, you're keeping him informed so
10 he can -- and it sounds like everybody is being very
11 solicitous and courteous about that, so that Judge Broderick
12 doesn't feel like he's had a (indiscernible) with the
13 (indiscernible) handed to him. So, he knows sort of how
14 things are sequencing.

15 And my intent in being deferential to those
16 proceedings is also not to push any problems on him, but
17 just to be understanding of sort of a relationship between
18 the two. And I know in speaking to other judges, as I told
19 you before, that we occasionally -- not often -- but
20 occasionally in this court have this kind of an issue come
21 up where the actual underlying lawsuit is pending up the
22 street and we have the bankruptcy and there's a question
23 about where injunctive relief should -- that request should
24 go.

25 And I think I've seen other judges, essentially,

1 in light of Bankruptcy Court jurisdiction and the fact that
2 the underlying merits are up the street to defer to the
3 District Court, unless they would like our assistance. So,
4 that's fine.

5 MR. HYMAN: That's helpful, Your Honor.

6 And we included a copy of the transcript from the
7 last hearing with our filing in front of Judge Broderick.

8 THE COURT: All right.

9 MR. ROSENTHAL: All I would say, Your Honor, is
10 just, you know, our letter to Judge Broderick says what it
11 said. The law is what it is.

12 THE COURT: Right.

13 MR. ROSENTHAL: And Mr. Hyman can research the law
14 himself in terms of, you know, what any deadlines may be.

15 And, you know, to the extent that he wants to hold
16 us to something, the law is what it is.

17 THE COURT: Well, that's in front of Judge
18 Broderick --

19 MR. ROSENTHAL: Exactly.

20 THE COURT: -- and you'll all let me know what --
21 if and when it's necessary for me to weigh in on those
22 questions.

23 All right. But, again, I appreciate you keeping
24 him informed because that's obviously, I would think, very
25 helpful, and we'll just -- that's the other reason why I

1 think December 4th makes sense, given the other things that
2 are floating around, it gives us a useful opportunity to
3 touch base.

4 All right. With that said, thank you very much.
5 As you work your way through these issues that we were
6 discussing, particularly, the order, if there's anything
7 that would -- you think is necessary to have further
8 discussion, you can just contact chambers and we can set up
9 a CourtCall.

10 All right. Thank you.

11 COUNSEL: Thank you, Your Honor.

12 (Proceedings concluded at 1:15 p.m.)
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C E R T I F I C A T I O N

We, Jamie Gallagher and William Garling, certify that the foregoing transcript is a true and accurate record of the proceedings.

Jamie Gallagher

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&	3rd 9:17	43:13	application 49:8
& 3:18	4	administration	appoint 14:20
1	4 1:18 48:5	1:7	32:4
1.2 37:3	4,000 34:24 35:8	administrator	appointed 14:14
10 36:12	36:15	38:16	31:1 32:10 39:8
100 34:3,4	4th 46:22,22,23	administrators	48:12
10004-1408 1:16	47:4 52:1	1:9 3:3,12 4:8	appointing 6:3
10006 3:21	6	38:21 42:14 49:5	13:17
11 6:16	6 53:15	adopted 40:9	appointment 4:23
11036 3:14	7	advance 39:4	17:9 25:15
11501 53:24	71 5:5	afraid 22:2	appreciate 10:2
11:00 48:6,9	72 5:5	afternoon 35:24	10:10 31:14 51:23
11:29 1:19	73 5:5 34:12	47:7,14	approach 9:4
11:42 13:11	8	agree 8:13 12:24	approaches 9:4
12:25 13:11	8,000 34:25 36:2	20:21 26:23 29:3	appropriate 9:9
15 4:3 5:10 7:14	36:10,14,17	agreed 14:15	14:1,2 21:15
7:15 13:15	800 36:1	16:15 17:11 33:16	22:13 28:11 43:8
1540 3:13	8th 9:15,19	agreeing 10:4	appropriateness
1600 3:5	a	agreement 13:20	15:24
17th 48:9	a.m. 13:11	17:17	aquatic 38:4
19-11845 1:9	ability 39:23	ai 23:25	arbiter 21:21
19801 3:6	able 44:15	air 11:4	arbitration 49:24
1:15 52:12	absent 27:16	allen 7:8	argument 29:12
2	absolute 45:11	allow 22:12	49:22,23
2 36:18 42:1,24	abstract 33:24	allowed 47:10	arguments 15:23
2019 1:18 53:15	accessible 9:6	amended 18:6	arises 14:23
222 3:4	accurate 53:4	amount 34:6	arms 11:4
24,000 34:17	acrimony 8:11	analysis 23:15	arriving 48:20
25th 49:18	actual 50:21	announce 46:17	asked 40:25
26th 33:2	adapt 25:3	answer 16:2	assert 16:6
27 36:25 43:3	add 20:2 25:11	answers 25:4	assertions 15:23
2nd 34:13 38:22	34:15	anticipate 36:17	assistance 51:3
39:12 40:17 41:10	additional 6:24	anybody 40:3	associates 21:10
3	31:3 46:11,18	47:8	assume 16:17
3.7 37:3	49:12	anyway 10:8 21:1	20:6,24 24:22
30 16:3 29:2 50:1	address 7:14 12:4	30:21 32:4	31:8 37:14
50:3	15:25 21:9 25:6	apparently 21:11	assumptions 29:3
300 53:23	32:24 44:13,23	21:19 40:13	attached 31:9
30th 5:4	45:16	appear 12:23	attention 7:9
31 33:15	addressed 15:22	appearances 4:3	12:19 32:21
330 53:22	27:22 28:2,7	appears 5:8	attorney's 5:7
		applicable 35:4	attorneys 3:3,12
			3:19

<p>august 36:25 43:3 authority 21:15 37:22 46:17 avenue 3:4 avoid 48:25 award 49:24 awkward 39:20 axe 8:13,15</p>	<p>better 12:2 24:2 41:18 45:3 bidder 15:9 big 11:5 13:16 26:2 binder 32:12 bit 11:17 16:21 26:4 36:8 43:2 blind 14:7 blissfully 11:2 bogged 20:15 bolts 25:22 borrow 10:15 borrowing 16:21 bother 27:1 bottom 38:5 bound 46:16 bowling 1:15 box 44:14 boxes 44:19 breach 5:21 break 12:4 brief 13:15 bring 12:9 18:7 47:10 48:16 broadened 41:22 broader 45:24 46:18 broadway 3:13 broderick 49:4,7 49:11,19,24 50:5 50:11 51:7,10,18 bsg 1:6 4:2 13:14 bsgr 4:8 build 26:20 built 26:17 27:17 bunch 18:3 burden 29:5 44:25 burdening 9:5 busy 48:11</p>	<p>c c 3:1 4:1 53:1,1 calculations 24:1 calculator 34:15 calendar 47:11 call 23:21 33:12 35:6 36:11 39:16 called 21:12 33:3 37:12 callewaert 1:8 calling 13:23 31:20 candidates 31:12 capacity 24:2 card 40:3 carefully 11:18 case 1:9 4:2,3 5:10 6:2 7:1,8 10:19 12:22 13:1,15 14:17,21 15:10 18:2 24:13 33:3 33:10 48:10 cases 6:16 7:15 categories 41:22 category 21:5 caveat 19:12 ceremony 31:16 certain 6:19 9:14 12:17 15:20 19:13 24:7 28:25 30:20 42:13 44:7,8 certainly 9:4 12:4 14:3 24:18 25:9 28:4 37:24 38:6,9 39:10 43:18 45:22 certify 53:3 cetera 15:20,21 challenge 49:8 chamber's 13:7 chambers 52:8 chance 10:12,22 change 22:8 30:4</p>	<p>changes 25:1 28:3 chapter 4:3 5:10 7:14,15 13:14 charge 7:8 chat 13:6,16 check 7:25 14:13 14:21 35:7 47:13 circulated 16:17 circumstances 12:17 30:9 civil 12:16 clarify 36:1 clarity 12:9 41:8 clear 24:3 26:15 29:15 30:13,13 clearly 5:25 39:22 clears 6:18 cleary 3:18 4:14 5:4 clerk 13:12 clients 14:17 close 16:3 cohen 1:9 colleague 4:9 collecting 39:18 come 5:14 10:19 13:7,25 16:6 20:25 22:2,11,11 23:10,14 24:7 28:22 30:16 31:5 39:9 40:23 50:20 comes 31:18,20 33:4 coming 28:6 30:6 32:16 43:15 comment 19:8 29:10 41:6,20 48:19 comments 10:10 32:17 commercially 23:1</p>
---	--	---	--

[common - december]

Page 3

common 42:3 company 44:8 compartmentali... 20:9 competent 8:15 complaint 18:6 completely 46:6 completing 9:14 complicated 11:24 12:25 40:11 concept 22:10 concepts 44:25 concern 9:11 18:9 21:1 22:10 29:4 concerned 29:8 38:22 44:11 45:4 45:5 concerns 21:25 25:7 concluded 52:12 conclusion 30:14 conclusions 16:15 20:12 conducting 16:11 confer 17:11 24:19,20 32:7 46:7 conference 2:1 11:24 confidence 7:25 confident 16:8 confirm 38:17 confirmation 43:14 confirmed 38:21 conflicts 14:13,21 14:23 28:21 conformed 36:13 conjunction 17:9 connection 31:25 connections 14:16 consensually 32:2	consent 21:19 27:16 31:18 consider 15:8 considered 7:5 45:22 consistent 36:13 43:6 constructive 9:3,4 consuming 8:3 10:7 contact 32:10 52:8 contention 16:2 context 6:7 8:1,4 17:2 20:10,25 23:10 contexts 23:14 continue 11:12 46:7 49:7 continuing 18:25 contract 34:4 control 23:1 25:20 39:17,21 40:1 conversation 12:1 32:14 44:10 45:12 conversations 17:7 30:24 39:7 44:1 48:13 copied 30:19 copies 30:21 40:25 copy 31:3 36:6 51:6 correct 18:9 37:17 43:10 corrected 13:22 correctly 43:6 correspondence 40:25 43:2 cost 6:24,25 18:18 20:7 23:15 25:5,7 25:10 29:6	counsel 14:15 38:3 49:17 52:11 counterpoint 17:19 country 53:22 couple 6:17 11:14 46:25 48:10 course 26:1 court 1:1,14 4:2 4:12,17 6:1,2,5,10 6:13 8:6,8,20,23 8:25 9:13,23 10:16 12:6,11,23 13:10,13,25 14:3 14:9,12,19,23,25 15:5,8,13,18 16:10,21,25 17:4 17:24 18:2,21 19:7,15,20,22,25 20:4 21:14,17,21 21:22,24 22:8 23:9 24:11,24 25:12,16,24 26:2 26:11,16 27:1,4,7 27:12,18,24 28:7 28:20 29:23 30:1 32:5,19 33:1 34:8 34:18 35:12,17,20 35:23 36:19 37:11 37:18,21,22 38:2 38:14 39:1,3,9,20 40:21 41:17 42:2 42:22 43:1,5,11 43:23 46:1,5,9,14 46:15 47:7,12,20 48:5,8,17,18,23 49:4,14 50:4,7,9 50:20 51:1,3,8,12 51:17,20 court's 22:4 25:17 courtcall 52:9 courteous 50:11	courts 21:12 covered 41:15 44:19 create 19:18 creative 9:8 creativity 6:6 creature 38:4 criminal 7:8 crucial 26:11 crystal 24:3 current 6:25 18:7 currently 27:19 42:20 custody 25:20 39:21 40:1 cvs 31:9
d			
d 3:16 4:1 data 36:24 37:2,8 37:16 41:12 43:4 databases 41:23 date 9:20 33:17 33:18 44:20 45:5 46:21 48:8 53:15 day 5:17 13:4,5 50:1,3 days 16:3,19 29:2 de 3:6 31:21 deadline 33:2,8,9 33:15,19,20 36:18 38:22,25 39:2,3,5 39:9,13 deadlines 51:14 deal 13:4 22:1 26:2 dealing 5:14 24:6 dealt 22:20 23:22 death 6:15 debate 19:22 21:6 44:7 debtors 1:11 december 9:20 36:18 38:22 39:12			

[december - existing]

Page 4

40:17 41:10 42:1 42:24 46:19,22,23 48:5,9 52:1 decide 23:10 30:19 decided 23:4 45:23 decision 8:11 24:2 31:19 46:10 49:7 decisions 20:11 23:25 24:1 31:1 deep 48:25 defer 51:2 deferential 31:22 50:15 defining 23:5 definition 26:15 definitive 22:23 delaware 3:4 delay 18:11 19:18 22:3 36:8 delineate 21:5 delivery 36:6 dentist's 33:4 depending 40:22 designate 14:10 designated 7:23 7:24 detail 25:22 details 10:13,25 29:25 detention 22:4 determination 49:23 determine 49:20 50:7 determined 41:23 42:18 developing 7:16 devil 10:13,25 29:24 different 12:15 23:13,14,14 30:1	36:3 44:10,24 45:19 difficult 33:21 49:16 disclosure 14:16 discovery 4:24 5:22 6:14 7:8 10:14,25 12:12,21 13:1,16 15:20,20 16:3 17:4 20:8 23:12,12 25:8 27:25 30:2,15 38:4 discuss 32:6 discussed 5:24,25 19:1,5 22:16 26:22 discussing 15:3 37:10 52:6 discussion 9:14 23:17 44:22 52:8 dispatch 15:3 17:7 18:20 dispute 19:14 disputes 8:4 12:12 12:21 13:1 18:7 26:21 distinction 26:12 distract 48:14 district 1:2 6:10 10:16 48:17 49:4 51:3 docket 34:12 dockets 5:5 document 17:15 17:16 22:17,19 25:16 26:18 27:3 27:6,8,10 34:3 documents 19:19 22:25 23:1 33:23 34:2,3,24 35:5 36:1,2,4,9,14,21 36:22,23,24 37:4	37:8,13,15,19 39:15,16 40:15 41:2,4,9,12,14,22 42:1,4,5,20 43:9 43:15 44:15 45:2 45:14,15 46:8,9 doing 4:20 7:20 29:17,19,20 33:22 43:23 45:9 domain 23:20 donald 33:11 door 13:7 double 35:7 doubt 5:15 23:20 47:22 drag 6:15 drill 24:6 dual 18:13 duane 3:2,11 4:7 5:3 35:4,9,25 duplication 24:14 dust 6:18 duties 22:24 23:6 duty 46:16 e e 1:21,21 3:1,1 4:1 4:1 23:20 53:1 earlier 16:2 early 9:20 easy 26:15 effect 49:25 effective 18:18 efficient 7:1,19 11:10 17:21 30:11 30:12 31:17 effort 46:7 efforts 48:14 eight 35:8 36:15 37:2 either 7:1 14:17 20:12 37:20 47:9 47:14	elected 14:16 email 44:19 emails 45:7 emphasis 18:12 employed 19:12 employee 42:15 empowered 10:17 encompass 44:24 ended 40:10 endorse 7:21 ends 24:8 entered 22:18 equivalents 7:8 esq 3:8,9,16,23,24 essentially 13:3 16:21 18:4,6 30:15 50:25 establish 29:21 estimated 33:23 et 15:20,20 eventually 31:5 everybody 40:11 50:10 evidence 47:24 exact 9:20 exactly 14:10 15:12 21:16 51:19 examination 24:14 examiner 23:3 28:11 examiners 21:12 example 15:19,23 16:1 23:17 27:8 33:22 42:12 examples 16:1,7 exchange 13:23 14:5 excited 12:20 excuse 13:14 exercise 4:20 existing 15:19 21:10
--	---	---	--

[exit - happy]

Page 5

exit 11:3 expand 19:18 expect 38:21,24 40:18 expedited 37:25 experience 34:1 explain 26:16 explaining 49:6 explains 39:22 extend 33:18 extended 33:20 extension 39:10 extensions 38:23 38:23 extensive 4:19 extent 7:18 15:21 30:17 36:23 37:7 37:8,19 39:25 40:1,18 45:14 47:20 49:11 51:15	felt 33:3 fight 6:17 18:7 fighting 27:21 fighter 6:15,15 figure 21:14 30:17 30:25 34:14 figuring 21:13 file 16:19,25 20:14 21:2 filed 5:4 9:19 16:17 49:17 filing 49:4,5 51:7 final 12:9 35:6,10 find 30:7 34:11 41:16 finding 9:9 30:7 findings 16:14 40:5,6,9 fine 9:23 25:6 28:8,18,20 47:9 47:14,25 51:4 firms 14:18 first 10:21,21 12:22 17:12 20:19 26:24 27:11 28:7 28:13,17 29:25 32:9,13 39:8 five 5:17 flash 21:6 23:11 flexibility 31:14 floating 52:2 focus 6:12 19:3 46:24 folks 4:4 8:12 10:10 26:10 29:6 31:10 41:1 42:3 follow 11:23 17:5 footnote 39:21 foregoing 53:4 forward 9:11 11:12,25 13:17 18:24 38:5	found 39:17,25 four 4:25 34:18 36:15 framework 26:20 frankly 45:19 frederick 3:16 free 30:9 40:3 friday 14:6 32:3 front 12:23 27:20 30:18 43:21 50:5 51:7,17 fully 36:4,10 funnel 27:25 28:1 further 18:19 37:7 38:13 48:19 52:7 future 27:8 38:8	going 4:23 6:2 9:15 10:8 13:22 18:10 21:6 23:10 23:11,22,23 25:13 28:4,22 33:24 34:7 35:13 36:15 39:2,4 44:17 47:23 48:23 49:5 good 4:6,13,16,17 6:22 8:12 10:6 15:4 19:16 30:23 33:9 35:24 39:11 40:12 gotten 20:25 gottlieb 3:18 4:14 grasp 39:11 great 11:3 13:9 21:8 green 1:15 grind 8:14,15 group 8:2 guess 6:7 20:8,17 34:16 guidance 23:5 27:12 28:6,13 29:1,2 45:18 49:11 gurnsey 37:14,21 37:22 43:14
f	f	g	h
f 1:21 53:1 face 17:11,11 fact 9:14 20:11 22:9 29:1 32:15 33:1 51:1 factors 45:21 facts 23:24 factual 40:9 44:16 failure 24:9 faith 19:16 33:10 fall 27:2 37:9 fantastic 11:4 far 6:9 34:14 35:1 36:16 fashion 5:11 36:13 feel 22:12 45:6 50:12 feelings 38:13 feels 47:21 fees 5:7	f	g 4:1 gallagher 2:25 53:3,8 garling 2:25 53:3 53:11 gathering 37:24 gdpr 35:5 generally 11:1 getting 24:15 26:20,23 37:5 43:14 44:11 48:12 give 10:22 11:14 13:6 29:7 30:6 31:6,9 40:2 42:11 46:23 49:25 given 23:4,5 52:1 gives 25:2 30:1 52:2 giving 13:15 17:25 22:13,13 45:10 global 39:11 go 5:19 6:18 10:18 25:23 27:15 49:12 50:24	h 1:22 hallway 29:16 hamilton 3:18 hand 13:4 40:18 44:6,9 handed 50:13 hanging 37:13 happen 5:12 9:16 23:11 happened 6:9 18:5 28:10 happy 5:20 6:23 9:7,23 12:3 24:18

[happy - judge]

Page 6

32:25 35:20 47:15 hard 21:10 28:21 28:25 38:19 hashing 38:11 hazard 10:2 hear 5:20 8:21,25 19:9 20:4 24:18 35:20,22 38:2 40:16 41:17,19 46:6 heard 22:14 26:9 26:11 27:24 31:21 47:22 50:6 hearing 2:1 4:19 4:24 5:16 6:6 25:15 43:21 49:7 51:7 hearings 16:9 18:22 24:25 49:15 held 38:24 helpful 12:8 13:5 28:12 38:16,18,20 41:7 45:18 46:19 51:5,25 hesitant 26:8 hit 38:21 hitchings 3:9 4:9 35:18,24,25 36:20 37:17,19 41:8,20 42:12,23 43:3,10 hitting 38:25 hold 24:21,21 50:3 51:15 holder 48:4 holding 41:13 42:10 hon 1:22 honor 4:6,13 5:23 7:22 8:21 9:2 13:9 14:14 15:19 16:6 16:16,19 18:16 19:11 20:2 21:9 22:18,21,22,23	23:4,4 25:14 26:17 28:19 29:9 29:18 32:1,24 35:2,16,24 38:10 39:14,17 41:5,20 42:18 43:4,12,22 45:17,23 47:6 48:17 49:2 51:5,9 52:11 honor's 41:15 hope 24:15,15,17 37:25 hoped 33:16 hopeful 47:18 hopefully 25:2 26:24 46:19 horse 15:9 huge 25:25 hung 18:4 hyman 3:16 4:8 48:16,19 49:2,15 50:6 51:5,13 i idea 6:22 7:17,18 7:21 10:4,5 11:3 11:16 12:5 15:4 17:12 20:15,17 21:18,19,20 30:23 47:1 ideas 10:2 45:10 identified 36:25 37:3 41:11,25 42:4,8,10,13 43:4 identifies 17:15 identify 28:1 44:17 ignorant 11:2 illusions 12:18 imagine 19:4 30:25 31:13 32:5 immediate 29:7 34:22	impact 26:3 implementation 25:21 implemented 26:21 implements 23:6 important 12:19 12:21 26:13 36:20 38:5 49:6 impose 29:5 improve 31:15 include 36:21,21 36:24 included 41:24 42:20,25 49:10 51:6 including 13:17 inclusion 44:8 inconsistent 7:13 indicated 49:19 indicates 40:15 indiscern 6:11 indiscernible 25:9 32:6 41:1 45:21 48:21 50:12,13 individual 31:1 44:9 individuals 45:6 infinite 6:6 inflicted 5:9 information 12:9 informed 44:16 50:9 51:24 initial 32:6,9 injunctive 49:12 49:21 50:23 insights 26:24 instance 10:21 20:19 26:24,25 27:11 28:7,13,17 39:8 42:14 intellectual 26:5	intelligent 23:25 46:10 intend 41:10 intensive 12:12 intent 28:23,23 30:10 50:15 interest 11:25 interesting 7:15 interference 18:13 interrogatories 16:2 invoices 34:4 involved 11:8 12:16 35:19 involves 36:7 issue 8:17,18,24 14:23 15:14 26:6 26:7 27:13 28:5 32:25 36:18 39:11 43:16 50:20 issues 5:1,14 6:20 9:24 11:11 12:19 15:21 16:1 17:22 19:1,7 22:20,25 23:13,15 24:6 25:3,20 30:15 31:5 32:22 45:16 46:16 52:5 it'll 31:4,22 j jail 40:3 jamie 2:25 53:3,8 jarret 3:9 4:9 35:25 jeff 4:15 jeffrey 3:23 job 5:17 10:2 30:7 joint 1:9 3:3,12 4:7 38:20 42:14 49:5 judge 1:23 6:5,6 10:6,16 11:2
---	--	---	---

12:15 18:3 49:4,6 49:11,19,23 50:5 50:11 51:7,10,17 judges 10:1 12:20 47:23 50:18,25 judgment 49:25 july 25:15,17 jurisdiction 51:1	large 6:16 larger 35:13 laser 6:12 lastowski 4:7 lastowski 3:8 4:6 5:23,23 7:21 8:7 8:18,21,24 13:20 14:2,5,10,13,22 14:24 15:2,6,12 15:14 16:11,24 17:3,5 18:1,9 19:6 19:11,16,21,24 29:11 32:24 33:5 34:17,24 35:14,18 35:21 47:6,10,18 48:2,15 late 29:2 law 14:18 39:23 44:5 51:11,13,16 lawsuit 50:21 learn 33:22 43:15 learned 16:5 33:20 leave 13:25 30:24 32:8 leaving 11:5 led 13:2 33:12 left 41:16 legal 40:7 53:21 legitimate 5:1 lest 38:5 letter 5:3 9:18 23:18 32:22 34:11 34:12 36:25 38:9 39:5 43:3,6 45:20 51:10 letters 4:19,25,25 4:25 5:3,17 12:25 32:13,23 34:8 40:13 44:7 levels 45:20 liberty 3:20	lifland 6:6 light 32:19 46:24 51:1 limited 1:6 4:3 13:14 line 5:6 lisa 3:24 4:13 9:2 list 8:9,9 9:7 14:7 14:7 43:13 45:21 litigation 12:16 27:25 little 11:17 36:8 live 20:13 llp 3:2,11,18 4:7 loathe 6:7 10:1 logs 19:3 long 22:3 27:23 44:3 49:16 look 11:16 14:4 18:17 21:3 45:3 looked 37:1 looking 5:1,2,4 23:19 28:10 loop 12:5 lot 7:7 8:1,11 20:1 44:24 lots 44:13 low 34:16 37:13	master 4:23 5:24 7:23 13:18,24,24 15:15,17,22,25 16:14 17:10,12,19 17:21 18:11,16 19:17 20:12,20,24 22:22 23:2,6,9 25:10,15,23 27:14 27:15 28:11 29:12 30:14,20 31:20 41:21 42:17 43:19 48:20 master's 26:23 masters 21:13 mat 10:19 materials 37:23 matter 1:4 26:5 26:20 32:15 42:16 mean 6:16,20 8:8 10:3 11:22 19:20 29:24,24 30:3 34:16 meaning 16:22 39:3 42:6 meaningful 32:20 meaningfully 32:20,21 means 18:12 21:3 30:2 41:7 meet 24:19 32:7 33:10 46:7 47:1 meeting 17:12 memorialized 31:3 mentioned 12:24 37:12 43:2 49:3 merits 29:21 51:2 merry 6:18 mess 11:5 messy 44:3 met 4:11 39:4 michael 3:8 4:6 5:23
k			
keep 4:20 30:22 31:4 43:25 keeping 41:4 50:9 51:23 key 34:5 kind 6:10,14 10:3 10:16 13:18 25:22 26:17,19 28:1 29:7,13,17 37:1 50:20 kinds 28:1 knock 13:7 knockdown 6:15 know 5:2,5,9 6:5 6:5,17,23 7:5,10 7:17 8:1,12,14 9:15 10:5,6 12:5,7 12:15 14:7 15:9 18:15,18 25:19 26:25 27:9,14 28:5,21,24 29:11 29:24 33:6,11,11 33:21 34:1 35:4 36:20 41:4 43:2 44:6 45:10 46:14 47:13,21,22 48:14 49:16 50:18 51:10 51:14,15,20 knows 40:11 50:13			
l			
labor 12:12 lane 1:22			
	m	m 3:24 magistrate 6:11 6:11 10:16 16:22 16:23 17:5 mailboxes 42:13 42:18 mails 23:20 main 21:1 maintained 37:21 making 8:10 12:22 24:2 31:1 malcolm 1:8 marker 38:13	

midday 13:22 mild 19:12 million 37:3 41:9 41:9 mind 23:6 minds 33:16 mineola 53:24 minutes 10:23 11:14 mismatched 45:24 modified 39:13 mole 26:5 moments 13:6 money 5:6 11:8 monitor 6:1 month 22:3 28:24 29:22 morning 4:6,13 4:16,17 47:7,14 48:3 morris 3:2,11 4:7 5:3 35:4,9,25 motion 27:9 38:11 motions 18:3 motives 18:14,20 move 11:12 13:16 15:4 17:7,8 38:5 moves 9:11 moving 11:25 18:24,24 multiple 4:18 18:14 35:3	necessary 32:16 47:19 51:21 52:7 need 7:13 11:12 25:4 27:21 28:2 29:1 31:13 32:4 36:12 38:12 39:9 46:9,21 47:24 49:12 50:7 needed 42:18 needing 12:18 needs 10:18 39:5 never 7:15 12:20 47:21 new 1:2,16,16 3:14,21 15:25 16:5 19:19 20:7,9 20:15,15,17 21:5 21:9 22:10,16 23:11,21,22 26:9 26:15 38:19 47:1 news 10:6 40:12 night 45:13 nimble 25:3 nominates 8:2 non 35:5 normally 6:13 8:8 8:10 notes 6:9,9 notion 7:13 26:9 31:19 november 1:18 9:15,17,19 34:13 49:9 53:15 novo 31:21 number 5:5 25:18 26:19 31:6 33:23 34:12 numbers 13:21 34:9 35:21 38:18 38:19 nurse 33:4 nuts 25:22	ny 3:14,21 53:24 o o 1:21 4:1 53:1 object 14:6 objected 31:2 objection 16:19 17:1 20:14 21:2 30:16,16,22 31:19 objections 22:18 41:4 obligations 43:7 observations 6:19 obvious 17:13 obviously 6:8 9:10 10:20 25:7 44:5 51:24 occasionally 50:19,20 october 25:17 33:2,15 49:18 offer 33:1 offered 17:10 oh 10:4 18:10 okay 28:18 33:24 48:5 old 22:16 53:22 once 5:21 40:13 44:14 47:13 48:24 ones 16:7 34:25 41:15 open 5:13 47:21 opportunities 8:4 opportunity 13:15 52:2 option 47:2 options 7:5 order 15:19 16:16 31:13,17 32:2,5,9 39:3,22 41:15 52:6 ordered 15:19 orders 23:5 32:12 39:24	original 17:13 ought 27:12 outside 27:17 36:24 37:9 41:12 42:24 44:14 outweigh 24:14 overly 4:18 6:25 overoptimistic 33:13 p p 3:1,1,9 4:1 p.m. 13:11 52:12 packaged 36:6 page 34:4 pages 34:2,14,17 pan 15:11 papers 40:8 paradigm 10:16 parameters 22:22 part 10:19 12:22 23:23 37:15,15,25 40:17 44:10 participate 47:15 participating 47:25 participation 47:18 particular 7:17 8:16,18 9:1 30:14 44:19,20 particularly 7:4 7:12 20:6 44:18 52:6 particulars 24:7 parties 6:23 11:5 13:15,22 16:18 20:6 21:19 22:24 24:18 28:4 31:18 36:22 40:7 41:1 partner 4:8,14 party 5:10 8:2 14:8 19:7 24:12 39:15 40:4,6
n n 3:1 4:1 53:1 name 31:7 44:9 names 9:8 13:23 14:5,7 31:6,7 32:3 narrow 16:7 naïve 17:23 necessarily 19:18 22:16			

[party - put]

Page 9

<p>48:12 passed 24:25 passing 45:13 paste 36:6 pay 7:9 pays 44:3 pending 49:7 50:21 penultimate 35:3 people 4:22 5:6 6:17 7:9 8:2,9,10 8:13 10:1,3 12:10 14:6 20:12 22:12 24:4 27:20,24 28:24 29:25 30:1 31:15 40:14 45:7 45:7 46:16 47:25 people's 31:8 percolate 10:8 perfect 26:12 45:11 period 16:18 perish 38:6 permutation 20:17 permutations 23:21 person 7:24 9:9 14:14,17 16:15 30:6 32:4,10 47:24 personally 7:22 peters 4:10 47:10 phases 37:1 phone 47:11,16 48:1 phonetic 37:14 phrase 29:18 pick 8:9 14:9 31:7 31:11 picks 29:10 picture 13:16</p>	<p>pin 44:17 pipeline 35:1,9 36:2 37:5 place 27:14 50:1 placeholder 43:21 places 42:9 plans 34:23 play 50:4 plays 28:15 plaza 3:20 pleading 50:2 please 13:13 pleased 43:15 plenty 8:12 point 6:24 11:9 17:19 19:3 20:24 21:6,8 22:4,5 28:25 29:6,9 36:23 41:25 42:19 50:3,6 points 23:11 30:20 pop 26:6 pose 6:2 position 17:20,20 possession 25:19 37:20 39:21 40:1 possibility 13:17 possible 11:22 28:9 31:17 potential 13:23 24:14 42:6 practical 27:18 28:22 44:23 45:15 practice 27:9 prefer 47:7 prejudice 38:13 prepare 16:15 prepared 25:10 presence 46:17 present 16:4,14 16:16 17:19 18:16</p>	<p>presented 15:15 15:17 presenting 18:13 pretty 5:12 6:22 26:15 39:11 previously 29:19 45:22 print 36:7 prior 5:24 16:9 privilege 15:23 16:5 19:3 35:5,5 36:4,10 probably 6:21 31:2 32:15 problem 13:5 22:4 23:19 28:17 39:6 43:23 44:23 problems 11:20 50:16 procedural 21:4 procedure 6:3,25 16:13,22,25 17:6 procedures 9:9 36:7 proceed 18:10,19 18:20 proceeded 5:10 proceeding 17:9 37:14 48:17 proceedings 50:16 52:12 53:5 process 7:19 10:14 11:8 13:21 15:7 24:8,22 25:2 30:4,16,19 31:15 31:25 33:21 35:3 36:5,11 37:23 39:18 41:21 48:22 48:22 produce 18:17 33:25 40:2 41:10 produced 29:14 34:14,24,25 35:1</p>	<p>35:8,11 36:15 37:24 40:20 43:16 45:2 producing 42:4 production 17:16 18:11,14 19:2,2,6 34:13 36:16 38:1 40:17 productions 46:18 productive 4:20 5:18 7:19 professional 43:7 professionals 8:15 progress 12:8 17:16,17 38:18 40:14 prolong 17:6 promised 11:1 prompt 22:3 24:5 promptly 7:14 proper 22:19 proportional 18:19 proportionality 15:24 26:7 44:12 proposed 32:3 protection 21:4 protracted 13:1 provide 9:7 12:9 43:8 47:23 provided 37:23 prudent 14:24 pulling 48:22 purpose 23:2 purposes 42:24 pursue 27:9 46:12 push 7:6 46:25 47:2 50:16 put 5:11 32:8 38:12 43:21 44:17 47:12 48:3,8</p>
--	---	--	--

[putting - rulings]

Page 10

putting 41:3	recognize 9:25 49:24	representative 4:10	right 4:2,12,17 8:16 11:3 12:6,13
q	recognizing 43:20	request 7:14 18:17 22:19 40:5	14:12,19 15:1,5
qced 36:11	recommendation 16:23	49:10,13 50:23	16:10,11 17:25
qualified 31:10	reconcile 38:19	requested 14:15 15:16	18:23 19:8,15
question 6:3 9:1 20:8,14 21:3 32:19 38:3,7 50:22	reconvened 13:11	requests 17:15 22:17 25:17 26:18 27:3,6,8,10 40:13 45:23	20:25 21:1,2,15 21:17,23,24 22:7 22:11,11,15 23:12 24:4,10 25:8,25 26:6,10 28:3,14 29:20,21 30:12 32:5 34:11,18 35:9,23 36:19 37:11,15,18 38:2 39:12,13,20 40:12 41:6 42:2,22 43:11 44:24 46:1 46:2,5,8,21 47:12 47:14,20 48:2,18 48:23,25 49:14,21 51:8,12,23 52:4 52:10
questions 23:3 51:22	record 9:3 12:14 12:23 13:14 29:16 40:24 53:4	required 12:17	rights 22:14 28:16
queue 34:22	redacted 23:1	research 51:13	ripe 49:20
quickly 25:4 40:23	refer 39:15	reserve 25:8 28:16	rise 13:12
quite 41:7,13 42:3 45:19	referee 13:4	reserving 28:13	risk 29:18
r	reference 34:20 49:10	resources 1:6 4:3 6:1 13:14	road 53:22
r 1:21 3:1 4:1 53:1	referencing 40:8	respect 25:16,18 26:22 27:15	rolling 35:12,14 36:3 37:25
raised 5:2 6:20 32:22	reflect 31:18	respected 26:25	room 4:4 33:4
ramifications 19:25	reflected 43:1	respective 24:12	rosenthal 3:23 4:15,16 25:13 26:1,14 27:6 28:18 29:9 51:9 51:13,19
range 45:5	reflection 12:25	responded 22:19 40:14	ruled 22:22
ranges 44:20	refresh 18:5	response 5:2,3 24:5 29:7 32:18 49:16,17	rules 44:24
reached 20:12 41:2	regard 18:17 26:18 27:9	responsive 22:24 42:5 43:9 44:6,15	ruling 30:2
reaching 36:18	related 20:16,17	responsiveness 44:25	rulings 5:14,16 10:14 18:21 22:18 22:23 24:24 25:18 26:19 29:23,23 30:4 46:1
readily 9:6	relates 48:17	returned 35:6	
real 22:6 24:5,13 25:3	relationship 50:17	review 17:21 19:19 33:23,24 35:2,4,6,10,11 42:21 45:14	
realize 10:24	relatively 35:1	reviewed 34:5,21 36:4,10,13	
really 7:9 8:13 11:17 15:3 18:18 21:7 26:19 29:2 30:6 31:10 33:16 40:2	relevance 34:21	reviewers 36:12	
reason 6:14 12:13 42:17,19 51:25	relevant 23:5 45:22	rick 4:8	
recall 37:2	relief 7:14 25:8 49:12,13,22 50:23		
receive 4:18 37:7	relitigate 23:3		
received 36:22,23 40:16	remains 17:18		
recessed 13:11	remember 6:6 43:5		
	remove 20:5		
	repeating 35:21		
	report 16:16,22 37:5 40:15,18		
	reports 12:8 38:18		

[rumsfeld - starting]

Page 11

rumsfeld 33:12	searches 19:19	simple 32:25 36:6	41:12 42:4,9 43:4
run 20:13 44:4	29:13	simply 34:6	43:8
48:25 50:8	searching 42:13	single 4:18	southern 1:2
s	42:15	sink 38:5	space 4:18
s 3:1 4:1	seated 13:13	sit 5:9 17:14	spared 38:11
sanctions 7:9	second 20:7 34:12	situation 41:3	speak 9:21
satisfied 17:18	see 6:25 7:12,18	six 37:2	speaking 48:11
save 13:5 43:19	9:1 11:19 25:14	size 44:12	50:18
saw 23:17	25:21 26:17 27:18	slide 48:10	special 4:23 5:24
saying 18:17 39:5	28:15,23 34:8,20	slip 9:22	7:23 13:18,23,24
40:16	39:24 47:19	slipped 9:19	15:15,17,22,25
says 33:4 39:22	seek 25:8	slope 9:22	16:14 17:10,12,19
51:10	seeking 49:21	slow 7:16	17:21 18:10,16
scale 46:18	seen 38:12 50:25	snags 11:19	19:17 20:12,19,20
scheduled 49:8	select 8:2	solicitous 50:11	20:23 21:12 22:22
schweitzer 3:24	self 5:8	solutions 53:21	23:2,6,9 25:10,15
4:13,14 9:2,3,18	send 20:22 31:3	solve 23:19	25:23 26:23 27:14
12:3,7 13:9 20:2	35:10	somebody 10:18	27:15 28:10 29:12
21:8,16,18,23	senior 35:6,10	11:10 12:2 13:3	30:14,20 31:20
22:7,15 24:10,17	sense 10:17 12:2	13:18 14:21 20:16	41:21 42:17 43:19
25:5 32:1 38:10	14:19 20:19 21:5	23:23 24:11 26:25	48:20
38:15 39:14 40:12	24:15 26:4,12	30:8 31:11 44:21	specific 40:4
40:22 43:12 45:17	34:10 52:1	47:23	speed 30:22 31:4
46:3,6,13 47:4,9	sensitive 23:2	somebody's 10:17	48:12,16
48:3,7	sent 40:13	somewhat 28:12	spend 21:13
scope 15:15,20	sequencing 50:14	sooner 45:2	spending 11:7
19:2 22:19,23	series 49:15	sorry 36:2	46:14
23:5 25:14 46:3,4	seriously 33:8	sort 5:10 7:7,12	spent 5:6 28:24
46:11	serve 7:23 13:18	10:11,15,15 13:2	split 25:10
score 46:20	set 5:13,15 16:18	15:8 17:24 18:4	splitting 25:6
scramble 43:24	33:8 37:3 41:25	20:17 22:12 24:6	spreadsheet 17:14
50:7	52:8	31:21 32:6,9,9	sprung 10:11
scrape 41:14	share 20:7	34:15,19 35:13	stage 11:3
sean 1:22	shared 24:17	37:12 39:1,10	stages 36:3
search 15:24 19:3	ships 45:13	40:7 42:9 44:9,15	stalking 15:9
19:13,22 23:18	shl 1:9	44:24 45:20 46:16	stand 31:16,22
25:23,24,25 26:2	shorter 17:1 37:5	46:16,17 47:17	32:7
26:4,6 41:10 43:8	shut 43:25	50:13,17	standard 31:22
44:1,1 45:12	side 4:4 8:25 9:25	sorting 17:24	40:8
48:21	19:12 41:17	sorts 44:25	standstill 33:15
searched 37:9	similar 23:13 28:8	sounds 11:3 50:10	start 22:1
42:19	28:12 29:18	sources 36:24	starting 4:4 15:6
		37:2,8,16 41:11	

<p>state 39:22</p> <p>states 1:1 49:25</p> <p>status 2:1 34:10 43:14 47:25</p> <p>statute 7:13</p> <p>stay 47:17 48:23 50:1,3</p> <p>steen 3:18</p> <p>steeped 6:8 23:24 44:21,22</p> <p>step 21:10 35:4</p> <p>steps 35:3</p> <p>steven 4:10</p> <p>str 24:19</p> <p>straightened 4:22</p> <p>straightforward 8:5</p> <p>street 50:22 51:2</p> <p>strong 18:20</p> <p>subject 7:24 14:13 19:13 30:22</p> <p>submissions 32:11</p> <p>submit 32:2</p> <p>submitted 39:5</p> <p>suddenly 16:5 19:17</p> <p>sufficient 19:17</p> <p>suggest 11:9 41:21</p> <p>suggested 9:8</p> <p>suggesting 24:22</p> <p>suggestion 12:2</p> <p>suggestions 5:13</p> <p>suitable 31:11,12</p> <p>suite 3:5 53:23</p> <p>supervise 4:24</p> <p>support 21:20</p> <p>supporting 16:16</p> <p>suppose 5:21 20:22</p> <p>supposed 5:12 30:11</p>	<p>sure 4:21 9:8 10:11 12:3 13:21 25:12 30:20 31:9 31:12 35:7,17 36:12 41:7,13 42:3,11 44:18 45:9 48:7</p> <p>surface 41:14</p> <p>surprised 4:18</p> <p>suspense 20:5,6</p> <p>sustained 25:19</p> <p>sustaining 25:19</p> <p>sympathize 28:21</p> <p>t</p> <p>t 53:1,1</p> <p>take 12:3 20:13 22:10 30:8 34:7 38:8 50:2</p> <p>talk 6:24 8:19 9:10,24 10:12,23 11:12,14,15 31:24</p> <p>talking 6:7 20:7 23:18 29:16</p> <p>target 36:18 42:1</p> <p>technical 36:7</p> <p>tee 12:14 20:20 28:5</p> <p>teed 22:20 27:7</p> <p>tell 10:1 13:19 31:7</p> <p>tells 34:1</p> <p>tend 6:17</p> <p>term 45:12</p> <p>terms 10:13 15:24 16:13 17:17 19:3 19:13,22 23:18 25:14,18,23,24,25 26:2,4,6 29:5 32:22 34:5 40:19 44:1,1,7,12 45:23 46:3 48:21 51:14</p> <p>terrible 10:5</p>	<p>testify 47:24</p> <p>texting 21:11</p> <p>thank 4:12 9:2 13:9,10 28:19 38:10 39:14 43:12 45:17 48:15 52:4 52:10,11</p> <p>theme 15:2 17:6</p> <p>theoretical 46:15</p> <p>thing 6:10 16:13 21:25 25:11 26:8 29:15,22 32:13 43:19,20,25 44:16</p> <p>things 4:21 5:19 6:17,19 7:6 9:11 9:15 10:8,21 11:25 12:14,16 13:4 15:16,17 17:6 18:3,8 19:4 20:8,8,16 22:6 23:16 24:7,21 26:3,4,8 27:2,21 28:2,24,25 29:19 29:20 30:11,20,23 32:7,16 34:20,22 37:11,13 38:6,12 41:16 44:8,15,20 44:25 45:2 46:11 46:15,24 47:16 50:14 52:1</p> <p>think 4:10 5:4,11 6:22 7:6,22 8:3,5 9:7,21 10:7,12,15 10:22,24 11:7,17 11:23 12:4,8,11 13:2 14:3,22 17:23 18:21 19:8 21:17,22,24 22:8 22:21 24:3,17,24 25:1,5,6,14 26:5 26:11,12,14,19 27:4,16,19 28:6,6 28:18,20 29:6,18</p>	<p>29:19,20 30:5,13 31:11,15,17 32:15 34:12,12 35:2 37:12 38:16,20 39:8,10,11,12 40:11 42:5,12 43:18,19 44:14,18 44:23 45:1,8,19 45:21,24 46:19,24 48:10,20,24 49:3 49:20,22 50:25 51:24 52:1,7</p> <p>thinking 11:4 13:2 26:16 27:1</p> <p>third 8:3 19:6,7 24:12 36:22 39:15 40:25</p> <p>thought 7:1 9:13 11:13,24 20:18 24:11 26:10 41:18 41:19 49:6</p> <p>thoughts 5:20 11:20 32:17</p> <p>thousand 34:2,18 35:8</p> <p>three 4:25 16:19 33:25 41:9</p> <p>throw 7:2,11,18 11:23 45:13</p> <p>throwing 45:8</p> <p>thursday 13:22</p> <p>time 6:1 8:3,12 10:7 11:7 15:9 16:18 21:13 22:6 24:5,13 25:3 33:9 34:6 40:3 43:24 46:15 49:3</p> <p>timeline 37:9 42:25</p> <p>timely 8:7</p> <p>times 8:1 27:24</p> <p>timing 19:2 49:20</p>
---	---	---	--

[title - wrong]

Page 13

title 14:1 28:11 today 4:7 5:24 8:22 9:10,16 11:12 16:9 24:20 32:21 41:5 46:21 today's 4:19 told 34:17 35:2 50:18 tomorrow 24:20 toolbox 7:6 totally 9:13 30:6 touch 52:3 track 18:13 transcribed 2:25 transcript 51:6 53:4 transferred 18:2 transparency 44:2 treat 39:2,3,12 tricky 44:2 tried 46:7 trip 47:17 trouble 30:7 true 53:4 truth 38:17 try 7:6 8:8 17:7 28:1,22 44:17 45:15 trying 18:7 22:5,9 31:16,16 34:10,13 40:2 44:22 tuesday 48:9 turn 32:21 33:5 tweaked 39:24 twelve 36:16 twenties 34:16 twenty 34:16,18 two 4:25 5:3 16:9 22:1 34:8 45:13 47:2 50:18 type 34:3	u u.s. 1:14,23 ultimate 21:21 ultimately 10:8 12:23 14:6 16:20 umbrella 15:22 26:18 27:2,17 unclear 9:16 uncomfortable 33:7 uncovered 41:23 underestimated 34:6 underlying 50:21 51:2 understand 11:11 28:4 34:19 37:21 38:6,9 39:18 41:3 49:2,19 understanding 9:18 38:24 42:2 43:5 50:17 understood 5:12 united 1:1 49:25 universe 37:4,15 41:13 42:20,24 43:1 unknown 33:12 33:12 unnecessary 18:8 untenable 30:7 update 17:25 updated 47:17 updates 34:9 use 24:21 useful 47:3 52:2 utility 29:21 utter 6:21	vale's 14:15 38:3 49:17 variations 5:25 various 29:3 34:9 36:3 43:4 venue 49:21 verbal 32:18 veritext 53:21 versus 21:9 22:16 45:12 view 12:15 22:4,5 views 30:1 volume 40:19,22 voluntary 33:15	33:20,20 36:14 37:1,10 38:12,15 38:17,22 42:8,10 42:12 44:18 weeds 9:6 week 22:2 24:20 49:17 weekend 9:19 weeks 33:25 36:16 46:25 47:2 48:10 weigh 51:21 welcome 9:3 whack 26:4 whoever's 32:16 39:8 william 1:7 2:25 53:3,11 willing 24:19 30:8 wilmington 3:6 wisdom 20:23 42:11 withhold 49:7 wonder 23:12 wondering 20:18 34:21 word 48:21 50:2 work 9:10 10:14 10:24 11:18 18:25 21:10 30:15 31:3 32:1,2 47:5 52:5 working 4:4 7:3 28:24 29:3 42:15 works 21:4 47:4 worth 12:1 worthwhile 31:2 worthy 20:6 wound 5:8 write 6:21 written 32:11 wrong 13:21 29:19
		w	
		wait 19:9 waiting 33:4 want 9:24 10:10 11:1,5 14:20 15:3 15:25 18:15 20:2 20:13,14 21:7,24 24:7 27:9,10 28:5 29:5,15 32:8,9,12 41:16 44:18 46:11 46:22,22 48:13 wanted 16:2 21:9 26:16 wants 8:21 47:15 51:15 waters 48:25 way 4:5 5:11,19 6:18 11:22 12:13 14:4 21:22 22:13 22:15,21 24:4 25:14,21 26:17 29:21 31:4 39:2 45:1 47:14 52:5 ways 20:1 22:1 31:15 44:13,23 45:8,15 we've 7:20 18:22 19:4,12 24:25 26:21 27:20 29:2	

[x - zero]

Page 14

x
x 1:3,12
y
yap 43:25 yeah 8:8,20 9:23 14:5 15:5 17:3 18:1,21 19:21,24 21:14 24:17 25:5 27:4 30:3 35:20 40:21 year 47:1 yield 44:11,12 45:12 york 1:2,16,16 3:14,21
z
zero 34:21